IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1211 of 2003
with
SPECIAL CIVIL APPLICATION No 1361 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRELI NAGAR PALIKA

Versus

ARVINDBHAI NANJIBHAI

Appearance:

1. Special Civil Application No. 1211 of 2003
MR PV HATHI for Petitioner No. 1
MR BS MISHRA for Respondent No. 1-4

2. Special Civil Application No. 1361 of 2003
MR PV HATHI for Petitioner No. 1
MR D.A. SURANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/12/2003

COMMON ORAL JUDGEMENT

RULE. Mr.B.S. Mishra and Mr.D.A. Surani, learned advocates waive service of rule for the respective respondents in Special Civil Applications No.1211 of 2003 and 1361 of 2003. At the request of the learned advocates the matters are taken up for final disposal today.

2. Mr.P.V. Hathi, learned advocate for the petitioner-Amreli Nagarpalika relied upon a judgement of the Honourable the Apex Court in the matter of Gram Sevak Prashikshan Kendra Vs. Workmen employed under them represented by the Manjri Farm Kamgar Union and others, reported in 2001 SCC (L&S) 1189. Mr. Hathi, learned advocate strenuously contended that the judgement and award of the learned Judge of the Industrial Tribunal, Bhavnagar dated 16.4.2002 in Reference (IT) No.192 of 1993 (in Special Civil Application No.1211 of 2003) and Reference (IT) No.194 of 1993 (in Special Civil Application No.1361 of 2003) is erroneous, contrary to law declared by the Honourable the Apex Court in the aforesaid judgement wherein the Honourable the Apex Court, in para 3, has observed as under:

"3. It is not in dispute that right from 1975 the workmen have been regularly working for more than 240 days a year. By virtue thereof, they will be entitled to continue so long as the seasonal work is available, and no retrenchment without complying with the mandatory provisions of section 25F of the Industrial Disputes Act would be effected. But, by virtue of continuing for 240 days and more, they do not acquire a permanent status to be absorbed as regular employees. For absorption as regular employees, existence of posts is mandatory. When we asked the learned counsel for the applicant, it was stated that the sanctioned posts are not more than 36. The workmen are more than 110. Under these circumstances, it cannot be comprehended that there exist sanctioned posts and the temporary employees are not being regularised. Mere continuance every year of seasonal work obviously during the period when the work was available, does not constitute a permanent status, unless there exist posts and regularisation is done. Under these circumstances the Tribunal and the High Court are not right in holding, that the respondents are

entitled to be absorbed on regular basis as regular employees." (emphasis supplied)

Mr.Hathi, learned advocate also relied upon a judgement of a Division Bench of this Court in the matter of Halvad Nagarpalika & others Vs. Jani Dipakbhai, reported in (2003) 2 GHJ (397). Mr.Hathi fairly submitted that this matter is pending before the Supreme Court.

As against this Mr.B.S. Mishra and Mr.D.A. Surani, learned advocates appearing for the respective respondents submitted that in the matter of workers of this very Municipality this Court has already decided four Special Civil Applications being No.11697 of 2001, 11703 of 2001, 2982 of 2002, 2983 of 2002 and 2985 of 2002. The learned advocates have made available a copy of the judgement of the learned Single Judge (Coram : H.K. Rathod, J.) dated 23/24th July 2003. The learned advocates submitted that against this judgement of the learned Single Judge, Letters Patent Appeals were filed by the Nagarpalika being Letters Patent Appeals No.1205 of 2003 and 1213 of 2003 and these Appeals are also dismissed and therefore, this Court should take a similar view in the matter.

Mr.B.S. Mishra and Mr.D.A. Surani, learned advocates appearing for the respondent workmen submitted that the facts of the present petitions are similar to those of other petitions, therefore, this Court also shall take the same view. They submitted that more particularly, when the view of the learned Single Judge is found favour with the Division Bench of this Court.

Taking into consideration the aforesaid submissions of both the learned advocates this Court is of the opinion that both these petitions must meet the same fate and order is passed in terms of the order passed by the learned Single Judge in those petitions as under:

In view of these observations and directions and considering the fact that the award passed by the Industrial Tribunal/ Labour Court in respect to each petition so far it relates to the direction of granting benefit of permanency in favour of each respondent workman is confirmed, so far it relates to arrears part in respect to each award the same is modified to the effect that each respondent workman is not entitled to 75% amount of arrears and only entitled to 25% arrears from

the petitioner Municipality and that will have to be paid by the petitioner Municipality as and when they have sufficient funds for making the payment to each respondent workman. It is further directed to the petitioner Municipality to implement each award in respect to each petition in favour of each respondent workman in respect to the direction of granting the benefit of permanency within a period of two months from the date of receiving the copy of the said order.

Accordingly, award in each petition is modified to the above extent. Each petition is partly allowed and rule made absolute accordingly.

(Ravi R. Tripathi, J.)

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